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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: APR 21 2011

Office: [redacted]

FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, [redacted] Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as an adjunct professor. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director did not contest that the petitioner qualifies for the classification sought but determined that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief, evidence that postdates the filing of the petition and evidence already part of the record of proceeding. For the reasons discussed below, the AAO upholds the director's ultimate determination that the petitioner has not established his eligibility for the benefit sought. While retention of knowledgeable professors in all fields is in the national interest, the petitioner has not established why the alien employment certification process described at 20 C.F.R. § 656.18 does not address that interest in this case. Specifically, the record does not demonstrate the petitioner's influence in his field such that the alien employment certification process normally required for advanced degree professionals, including professors, should be waived in the national interest.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in International Relations from [redacted] University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors that U.S. Citizenship and Immigration Services (USCIS) must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" requires future contributions by the alien and does not facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The AAO concurs with the director that the petitioner works in an area of intrinsic merit, [redacted] international relations. The next consideration is whether the proposed benefits of the petitioner's employment would be national in scope. In response to the director's request for additional evidence, counsel stated:

> The [redacted] problem and US – [redacted] relations are extremely important foreign policy issues for US government and [redacted] exceptional work in this area is of substantial direct benefit to the US is directly national in scope. Advising on [redacted] issues and the threat of [redacted] is without doubt, National in Scope.

The director acknowledged the evidence of the petitioner's articles, lectures and service as a commentator for news programs but concluded, without explanation, that the petitioner would not "directly or indirectly, impart a national-level benefit to the United States."

On appeal, counsel repeats the language from his response to the request for additional evidence. At issue is whether the proposed benefits of the petitioner's work will be national in scope. The record lacks evidence that the petitioner has ever served as an advisor to U.S. government officials. The fact that the petitioner's students may go on to work for the U.S. government is insufficient to establish the national scope of his work. Nevertheless, he has authored articles on U.S. policy in relation to [redacted] in widely distributed publications. Thus, the AAO does not contest that the *proposed* benefits of his work would be national in scope.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver is not persuasive. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, the AAO notes that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner has authored several articles. Some of these articles appeared in publications of the institutions where he is working or has worked, such as [redacted] University's [redacted] and [redacted] University's [redacted] Other articles or chapters appeared in the general media such as [redacted] the [redacted] the [redacted] the [redacted] International Center for Scholars' [redacted] The petitioner has also authored opinion pieces for the [redacted]

[redacted] and the [redacted] Further, the petitioner authored a book review in [redacted] and translated an article in [redacted] Submitting an unsolicited opinion letter and translating an article do not demonstrate recognition of the petitioner's influence in the field. The AAO will consider the remaining publications below.

While the above evidence reflects that the petitioner has disseminated his views, it does not demonstrate the ultimate influence of these publications. The record lacks evidence that other international relations experts have cited the petitioner's published work, that professors at a significant number of independent institutions have assigned these articles as required reading or comparable evidence of the influence of the above articles.

The petitioner also submitted an article in the local publication, [redacted] The article reports on the [redacted] Hall Lecture Series and notes the petitioner's participation in the series as a speaker. This local speaking engagement for the general public does not demonstrate the petitioner's influence in the field of [redacted] international relations.

The petitioner submitted evidence that he gave a presentation or served as a panelist at the [redacted] International Center for Scholars, the [redacted] Institute, the [redacted] Foundation and the [redacted] World Affairs Council. Counsel also references a presentation at [redacted] and the [redacted] School of Management at the [redacted] The unsupported assertions of counsel, however, do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). The record does not contain evidence of the petitioner's [redacted] and [redacted] presentations.

The record does not establish that the above presentations represent more than the typical foreign policy discourse among those in academia and think tanks. The petitioner provided no evidence of the ultimate influence of these presentations.

Counsel has asserted that the petitioner "has been a frequent commentator on the [redacted] appearances on [redacted] with [redacted] etc." Counsel further asserted that the petitioner's "views have been quoted in numerous American and international newspapers, including the [redacted] and numerous [redacted] media. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. at 534 n.2; *Matter of Laureano,* 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506.

The record contains a letter from [redacted] a reporter for [redacted] Radio [redacted] The World. The [redacted] and [redacted] in [redacted] coproduce this weekly one-hour news broadcast that is

broadcast on 300 stations throughout the United States.[1] [redacted] confirms that he has "turned to [the petitioner] numerous times for on-the-record interviews on issues of US-[redacted] relations, [redacted] nuclear activities and human rights record, and broader [redacted] issues." [redacted] praises the petitioner's "ability to deliver insightful analysis in a clear and captivating way for an American audience." The record also contains two transcripts of Online NewsHour features where the petitioner was one of the commentators.

On appeal, the petitioner submitted an article posted on www.cnn.com that quotes the petitioner. This article, however, postdates the filing of the petition. The petitioner must establish his eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

The above evidence demonstrates that a local radio reporter and PBS have found the petitioner's knowledge of [redacted] and its relations with [redacted] and the United States useful in explaining current events to the public. The petitioner has not explained, however, how these appearances demonstrate the petitioner's influence on the field of [redacted] international relations.

The record demonstrates that the petitioner has several years of experience. Moreover, in response to the director's request for additional evidence, the petitioner submitted a 2008 [redacted] Award [redacted] certificate recognizing the petitioner as a Finalist for Arts and Culture Reporting. Ten years of experience is one type of evidence that may be submitted to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(B). Similarly, recognition for achievements and significant contributions is another type of evidence that can be submitted to demonstrate exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(F). Because exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement, however, arguments hinging on the petitioner's experience or recognition, while relevant, are not dispositive to the matter at hand. *NYSDOT,* 22 I&N Dec. at 222. NEENA appears to be a local organization. Moreover, the petitioner was only a finalist. Regarding the petitioner's experience, nothing the statute suggests that the national interest waiver was designed as a blanket waiver for those with several years of experience.

The remaining evidence consists of reference letters. The letters purportedly from [redacted] and [redacted] bear no signature and, thus, have no evidentiary value. On appeal, counsel asserts that the director "ignored" these expert opinions. Counsel cites a federal court decision without a full citation. The decision appears to be an unpublished district court decision. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published

[1] *See* http://www.theworld.org/stations/#MD (accessed April 14, 2011 and incorporated into the record of proceedings).

decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value. Nevertheless, the AAO does not contest that properly signed reference letters must be considered and will do so below.

[redacted], Dean of the [redacted] School at [redacted] University, asserts that the petitioner's courses "have consistently been among the most highly rated" and draw a diverse group of students from nearby universities, "including government officials and officers of the U.S. Military." Regardless of the makeup of the students, a single teacher's impact at the national level is so attenuated as to be negligible. *NYSDOT*, 22 I&N Dec. at 217, n.3. The fact that the petitioner teaches a popular course does not demonstrate his influence among academicians in the field of [redacted] international relations.

[redacted] also praises the petitioner's "deep understanding of the history and culture of both the [redacted] and [redacted] civilizations that allows him to bring a rare intellectual perspective to the discussion of [redacted] history and contemporary international politics." Dean [redacted] further praises the petitioner's comfort with [redacted] and American culture, ability to communicate the complexities of the issues and skills as a public speaker. Finally, Dean [redacted] affirms that the petitioner provides commentary in media outlets and speaks at various venues, enhancing the image of Tufts and advancing an understanding of the [redacted] peninsula. Dean [redacted] however, provides no specific examples of how the petitioner's ideas have already influenced the field of [redacted] international relations. For example, Dean [redacted] does not reference articles by academicians, independent think tank reports or policy statements that cite the petitioner's work.

[redacted], Deputy National Intelligence Officer for [redacted] asserts that she has known the petitioner since her "student days" at the [redacted] School in 1996 and praises his ability as a teacher. The petitioner, however, was a student at that school in 1996. He did not receive his Ph.D. until 1998. That said, the AAO does not discount that the petitioner may have served as a graduate teaching assistant or instructor at that time. [redacted] affirms the petitioner's abilities as a public speaker and predicts that the petitioner will play "a pivotal role in advancing U.S.-[redacted] relations for many years to come as a teacher as well as practitioner." Once again, [redacted] letter is primarily conclusory without explaining how the field of international relations has changed due to the petitioner's influence. As she was formerly a fellow student at the [redacted] School, her letter does not demonstrate the petitioner's influence beyond his immediate circle of colleagues.

In a second letter, [redacted] asserts that the petitioner would serve the national interest to a greater degree than would an available U.S. worker with the same minimum qualifications because of the petitioner's "broad knowledge of both [redacted] and American history that is profound and unique not only in depth and insight but in its applicability to analyzing realistically all important issues related to US [redacted] relations." Merely repeating the legal standards does not satisfy the petitioner's burden of

proof.[2] Similarly, USCIS need not accept primarily conclusory assertions.[3] [redacted] provides no concrete examples of the petitioner's influence in the field of [redacted] international relations.

[redacted] the [redacted] Chair in Political Economy at the [redacted] describes the petitioner as "a brilliant and rising young scholar in the field of [redacted] affairs and US-[redacted] relations." [redacted] confirms that he invited the petitioner to lecture at "a number of events and conferences" and that the petitioner impressed the audiences. While this information suggests that the petitioner has gained exposure of his ideas, [redacted] does not explain how the petitioner has actually influenced his field.

[redacted] an assistant professor at [redacted] University, asserts that the petitioner's knowledge and experience "will be a great service to the U.S.," that the petitioner is "respected and well loved by his students" and fellow professors and that his "insights and expertise are well appreciated by policy circles and mass media." Professor [redacted] does not explain how he became aware of the petitioner's work. The petitioner previously worked at Sogang University in Seoul. Professor [redacted] also fails to explain how the field of [redacted] international relations has changed as a result of the petitioner's influence.

Finally, [redacted] a professor at [redacted] University, asserts that he met the petitioner when a professor at [redacted] recommended the petitioner to Professor [redacted] Professor [redacted] further asserts that he recommended the petitioner to [redacted] for a one semester course and invited the petitioner to take over the direction of the [redacted] Colloquium for one year. Professor [redacted] states that the resulting colloquium was "one of the most stimulating in recent memory." This letter, however, still does not demonstrate the petitioner's influence beyond the greater [redacted] area.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to

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[2] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

[3] *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of knowledge and unique perspective without specifically identifying contributions to the field and providing specific examples of how those contributions have influenced the field. As stated above, merely repeating the legal standards does not satisfy the petitioner's burden of proof.[4] The petitioner submitted no letters from anyone who had not worked with, studied with or interviewed the petitioner and failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

Ultimately, the petitioner is an experienced professor in his field who has written articles, including some opinion pieces, and has provided commentary to the media. The petitioner has earned the respect of his colleagues and those who have interviewed him. Nevertheless, the record lacks evidence of his wider influence in the field such that a waiver of the alien employment certification process is warranted in the national interest. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the alien employment certification process. *NYSDOT*, 22 I&N Dec. at 223.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.

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[4] *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc.*, 1997 WL 188942 at *5. Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.